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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,776	07/17/2003	Shigeo Fujita	1327-0124P	8920
2292	7590	12/05/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			GILLIAM, BARBARA LEE	
			ART UNIT	PAPER NUMBER
			1752	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/620,776	FUJITA ET AL.
	Examiner Barbara L. Gilliam	Art Unit 1752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 8/6/04, 7/9/04, 4/16/04, 7/17/03.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 and 8-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. 09/447,257.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 09302004.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Reissue Applications***

1. The preliminary amendment filed July 17, 2003 has been entered and fully considered.
2. Mr. Meikle confirmed the cancellation of claim 7 on September 24, 2004.
3. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:
  - a. The formula Applicant is attempting to amend does not match the original formula, formula (III) of column 5, lines 1-9 and column 39, lines 18-26.
  - b. Additionally, the format used to make the amendment is improper. 37 CFR 1.173 (i)(d): *Changes shown by markings.* Any changes relative to the patent being reissued which are made to the specification, including the claims, upon filing, or by an amendment paper in the reissue application, must include the following markings:
    - (1) The matter to be omitted by reissue must be enclosed in brackets; and
    - (2) The matter to be added by reissue must be underlined, except for amendments submitted on compact discs ( §§ 1.96 and 1.821(c)). Matter added by reissue on compact discs must be preceded with “ <U> ” and end with “ </U> ” to properly identify the material being added.
4. Claims 1-6, 8-9 and 10 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the oath is set forth in the discussion above in this Office action.

***Claim Rejections - 35 USC § 251***

5. Claims 1-6, 8-9 and 10 are rejected under 35 U.S.C. 251 as being based upon new matter added to the patent for which reissue is sought. The added material, which is not supported by the prior patent, is as follows:

Formula (III) at column 5, lines 1-9 and

Formula (III) at column 39, lines 18-26.

***Claim Rejections - 35 USC § 112***

6. Claims 1-6, 8-9 and 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The polymethine compound of claim 1 is produced via a condensation reaction using the diformyl compound represented by formula (III) as presented in the specification at column 5, lines 1-9 and column 39, lines 18-26. However, formula (III), as amended, introduces new matter.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara L. Gilliam whose telephone number is 571-272-

1330. The examiner can normally be reached on Monday through Thursday, 8:00 AM - 5:30 PM.

- a. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H. Kelly can be reached on 571-272-1526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
- b. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Barbara L. Gilliam  
Primary Examiner  
Art Unit 1752

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September 21, 2005